

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

MICHAEL D. McCRAY,

Plaintiff,

CASE No. 07-13297

v.

HONORABLE DENISE PAGE HOOD

MARC MOORE, *et al.*,

Defendants.

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**ORDER ACCEPTING REPORT AND RECOMMENDATION**

**I. INTRODUCTION**

This matter is before the Court on Magistrate Michael Hluchaniuk's Report and Recommendation [**Docket No. 49, filed August 6, 2008**] recommending that Defendant's Motions for Judgment on the Pleadings [**Docket No. 19, filed September 28, 2008**] and Summary Judgment [**Docket No. 23, filed October 26, 2008**] be granted, and Plaintiff's Motion to Voluntarily Dismiss Certain Defendants [**Docket No. 29, filed March 20, 2008**] be denied as moot, and that this matter be dismissed in its entirety with prejudice. Plaintiff filed an objection to the Report and Recommendation [**Docket. No. 52, filed August 18, 2008**], to which Defendants filed a Response [**Docket No. 53, filed August 21, 2008**].

The only objection raised to the Magistrate Judge's Report and Recommendation is that Plaintiff alleges that the applicable statute of limitations should have been tolled due to fraudulent concealment of his cause of action by the Defendants. This Court has reviewed the remainder of the Magistrate Judge's Report and Recommendation, and ACCEPTS and ADOPTS all portions not relating to the issue of tolling the statute of limitations, and will discuss

Plaintiff's objections below.

## **II. STANDARD OF REVIEW**

The standard of review to be employed by the Court when examining a Report and Recommendation is set forth in 28 U.S.C. § 636. This Court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1)(C). This Court “may accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate.” *Id.*

## **III. ANALYSIS**

Plaintiff asserts that the Magistrate Judge committed error by failing to find that the applicable statute of limitations should be tolled because of the alleged fraudulent concealment of his cause of action by the Defendants. To successfully advance a claim of fraudulent concealment as a basis for avoiding the limitations bar, Plaintiff must demonstrate that:

- 1) defendants wrongfully concealed the existence of the cause of action;
- 2) plaintiff failed to discover operative facts, within the limitation period, that are the basis of the cause of action; and
- 3) plaintiff exercised due diligence to discover those facts.

*Hill v. United States Dept. Of Labor*, 65 F. 3d 1331, 1335 (6<sup>th</sup> Cir. 1995).

Plaintiff has not produced new evidence substantiating his contention, nor does he satisfy the three elements needed to advance a theory of fraudulent concealment. Nowhere within his objections does Plaintiff explain how or when he actually discovered his claim, nor what new operative facts or information were obtained after the limitation period expired. In fact, as the Magistrate Judge notes on page 22 of his Report and Recommendation, the information that Plaintiff contends was concealed from him was used by him and his lawyer in reaching the plea

agreement for his underlying criminal proceedings on June 11, 2003. Plaintiff has failed to show that he has exercised due diligence in discovering the facts.

#### IV. CONCLUSION

The Court fully adopts Magistrate Judge Michael Hluchaniuk's Report and Recommendation.

Accordingly,

IT IS ORDERED that the Report and Recommendation of Magistrate Judge Michael Hluchaniuk [**Docket No. 49, filed August 6, 2008**] is ACCEPTED and ADOPTED as this Court's finding and conclusions of law.

IT IS FURTHER ORDERED that Defendant's Motion for Judgment on the Pleadings [**Docket No. 19, filed September 28, 2008**] is GRANTED

IT IS FURTHER ORDERED that Defendant's Motion for Summary Judgment [**Docket No. 23, filed October 26, 2008**] is GRANTED.

IT IS FURTHER ORDERED that Plaintiff's Motion to Voluntarily Dismiss Certain Defendants [**Docket No. 29, filed March 20, 2008**] is MOOT.

IT IS FURTHER ORDERED that this case is DISMISSED with prejudice.

S/Denise Page Hood

Denise Page Hood

United States District Judge

Dated: September 9, 2008

I hereby certify that a copy of the foregoing document was served upon counsel of record and Michael McCray, Reg. No. 239477, 4533 W. Industrial Park Dr., Kincheloe, MI 49786 on September 9, 2008, by electronic and/or ordinary mail.

S/William F. Lewis

Case Manager

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Denise Page Hood

United States District Judge

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S/William F. Lewis

Case Manager